

**TRAINING WORK SESSION  
OF THE BRIGHAM CITY COUNCIL  
ON RISK MANAGEMENT  
FEBRUARY 12, 2009  
9:30 A.M.**

PRESENT:	Lou Ann Christensen	Mayor
	Bruce Christensen	Councilmember
	Reese Jensen	Councilmember
	Ruth Jensen	Councilmember
	Bob Marabella	Councilmember
PRESENT:	Rick Bosworth	Human Resource Manager
	Ben Boyce	Director of Parks and Recreation
	Sharon Brailsford	Executive Assistant
	Jim Buchanan	EMS Director
	Mary Kate Christensen	City Recorder
	Blake Fannesbeck	Public Work Director
	Nancy Green	Senior Center Director
	Sue Hill	City Librarian
	Jared Johnson	Community Development Director
	Paul Larsen	City Planner
	Bruce Leonard	City Administrator
	Sara Lundberg	Museum Gallery Director
	Kirk Morgan	City Attorney
	Tyler Pugsley	Public Works Assistant Director
	Jason Roberts	Finance Director
	Paul Tittensor	Chief of Police
	Alan Wright	Director of Public Power
EXCUSED:	Scott Ericson	Councilmember

Mayor Christensen excused Councilmember Ericson. She introduced attorney Dave Church from the Utah League of Cities and Towns.

Mr. Church said one of the most complicated things to understand in Utah is the uniform powers of local government on an individual level because it is so unstructured. This recently changed somewhat in the last legislative session. The changes have made things a little more confusing. He said when he first started as an attorney he met with four Councilmembers from a small City. They told him they were elected and the Mayor would not do what they tell him, and the other councilmember would not do what they say. They said the people chose them and they think they should get their way. They wanted to fire the entire Police Department. They wanted to get out of the police business. They fired the Police Department and sold the police cars and equipment. They spent hundreds of thousands of dollars in lawsuits fighting with ex-officers, the ex-police chief and with each other. Both sides had lawyers, they had referendums and petitions to the Supreme Court. In the end, after two years of this, there was a new election and those four people were not in the majority any more. The first thing that happened when these four citizens were elected was that the City Administrator quit. The City Attorney quit. The disputes, the difficulties, the fights, they were honestly taken. People have heart felt positions. They thought they knew a better way to run the community. Literally 25 years later, Mr. Church was sitting in the same City Council meeting and the items on the agenda were, should we have a police force and should we have the City Manager or Mayor in charge? In 25 years the same fights were still going on, it was just a different set of people. Mr. Church said he has been working with cities on knowing their roles, knowing their charge since he started as an attorney. Since this first experience he has been through literally dozens and dozens of bad fights with cities when they are fighting among themselves, either with staff, with Councils or Mayors, and it is always about who is in charge, what their role is and what they can and cannot do.

Mr. Church said most residents do not understand that local government is not constitutional government; it is set by statute. There is no constitutional form of local government. The American traditional system for local government has always been government by committee. There is no mandatory separation of powers by constitution. The State Constitution says the State Legislature must provide a system for local government.

They have done that by adopting Title 10 of the Utah Municipal Code. This Title sets out basic powers, forms and duties. This title is the default, but cities can make changes. This makes it complicated in Utah because there are 247 cities in Utah and they have made changes. Brigham City is the Six Member Council form of government. This means there are six councilmembers and a Mayor, which is government by committee. Other cities have an optional form of government that was chosen by their voters called the Mayor/Council form of government. In the Six Member Council form, the default is that the Mayor is the Chief Executive Officer and Chief Administrative Officer. The Mayor has a set of individual powers and duties that are hers by statute. That includes being chair of the Council, the CEO, the CAO, the power to do things like call out a posse, let people out of prison that have been imprisoned for violation of municipal ordinances, serve as the budget officer, the chief financial officer, and they can marry people.

Under the Six Member form of government, the default for Councils is that the Council is the legislative body. They set broad policy for the City and may have executive and administrative power if it has been delegated to them by the Mayor or if there is an ordinance passed that gives them the power. That is one of the primary differences between the Mayor/Council form of government and the six member form. Councilmembers in Ogden and Logan, for example, may not have any administrative or executive functions at all by law. It cannot be given to them; they are legislative only. The Mayor in the Mayor/Council form of government does not sit as a member of the Council; he does not chair the Council. The Mayor is executive only; the Mayor has veto power. In Brigham City, the Mayor does not have a veto, the Mayor has a legislative role, chairs the Council, votes in case of tie and votes on other specific issues. These two forms of government are very different. The main difference is that there is no mandatory separation of powers. However, it is important to remember that the default setting for Brigham City is separation. If there are no changes in the ordinance, the Mayor is the CEO and has all the administrative powers; the Council, including the Mayor, is the legislative policy making body.

Theoretically, under the state statute, individual councilmembers can have executive and administrative functions. In order to get this, an ordinance has to be passed. This is one of the times the Mayor has a vote. In order for the ordinance to pass the Mayor must vote yes plus a majority of the Council, or it takes all five councilmembers to pass over the objection of the Mayor.

As part of this legislation, all ordinances before May 2008 are grandfathered in. Mr. Church has looked at Brigham City's ordinances and they state that the Mayor is the CEO and CAO. The Council are policy makers, not administrative or executive. The ordinances anticipate that the Mayor may appoint councilmembers as liaisons over departments. However, the ordinance does not specify what the powers and duties of those liaisons are. According to Brigham City's ordinances, the Mayor is the Chief Administrative and Executive Officer and no Councilmembers have any power to be administrators or executives unless the Mayor specifically delegations some of her power to them. This means that individually, councilmembers have one thing - the right to vote. As a group, or quorum, the Council has great power - the power to set the policies and practices of the entire City. The Mayor as an individual has individual powers as administrator and executor, and also the responsibility to carry out the policies and practices that the Council adopts.

Mr. Church explained how this legislation relates to employees. All directors are responsible to the City through the Mayor as the CEO and CAO. They are responsible to the Council through the Mayor. The City can adopt a different kind of flow chart, but this is the default setting. It is important from a risk management perspective to avoid jumping the chain of command as much as possible. This means that directors, councilmembers and mayors should try to avoid having employees go over the directors and go directly to the Mayor. If an employee goes to the Mayor and says they have a problem, the Mayor's first response should be to ask if they have talked to their supervisor. If the Mayor does not trust the supervisor to take care of it, then the wrong supervisor is in that position. If an employee contacts a councilmember with a problem, the councilmember's answer should be the same. If the councilmember wants to know more about the situation, they should go to the Mayor and ask what is going on. If the Mayor and Council involve themselves in these disputes by skipping the directors and supervisors, the potential for harm increases exponentially. It could result in claims from directors and problems from citizens. He added that in local government this is the hardest thing to do, because people elect them and some of those people are employees and they want to talk to the Council as voters, not employees.

Councilmember Marabella said he comes from Wal-Mart where they did just what Mr. Church discussed and they had an open line of communication at all levels. It was a very comfortable environment because there was no fear of retaliation. So many times in a supervisory role, an employee is scared to talk to their

supervisor for fear of retaliation. Mr. Church said the City can adopt a different structure, but that is not what Brigham City has now. He explained that Wal-Mart has an open line on the executive side, but the Board of Directors at Wal-Mart do not get involved in the day-to-day operations. The City Council is the equivalent to the Board of Directors, not the equivalent of management. Councilmember Ruth Jensen said the Council always has to have public relations. When she goes to the grocery store citizens and employees approach her all the time. Mr. Church said employees are different than voters. Employees need to work through the City's system that has been adopted; voters do not.

Mr. Church gave an example of this. If a citizen comes to a Council meeting and criticizes the Mayor or Council during a public forum and they are punished for it, he has a claim against the City for violating his first amendment rights of free speech. If an employee does the same thing, the Supreme Court says the City can punish him because he is talking about his job, about his boss. Employers can discipline employees for saying bad things about them because they need to control the workplace. It is important for those in local government to recognize that distinction to avoid controversy and claims. The Council needs to respect the system on who is in charge because the Council cannot protect that employee in the end.

Councilmember Reese Jensen commented that it is important that there is consistency because if an employee gets the ear of one councilmember and then he gives the employee direction, then they go to another councilmember and they yield and take that employee's side, it destroys the credibility of the entire body. Mr. Church agreed, adding that one of the reasons there is structure in small organizations like a City is because they are less like big corporations like Wal-Mart and more like large families. Employees are somewhat like children, they will shop for the opinion they want from the parent. There are six members of the Council and they will shop until they find someone that agrees with them. This is human nature. He noted, however, that if a Council as a group considers an issue and sets the policy, the Mayor and directors are bound to follow that policy. If an individual councilmember has an idea, the Mayor and directors are not bound to follow it.

Mr. Leonard said if an employee has a suggestion or a concern they should not be afraid to take it to their supervisor. The employee's manual lists discipline procedures and having an employee speak out about something is not a reason for discipline. Mr. Church said according to state law all employees, other than part-time, probationary employees and management level employees, have the right to continue employment and cannot be terminated except for reduction in force or for cause. Supervisor level employees and employees at-will, unless there is some kind of contract, can be let go for any reason, with or without cause at any time. He added that this can be changed by ordinance or procedure. Employees can be terminated for incompetence, insubordination, illegal conduct that keeps them from doing their job, or immoral conduct that prevents them from doing their job. If an employee is terminated for any other reason, they have the right to appeal to the appeals panel and the right to prove that there are grounds to terminate them. If an at-will employee is terminated they have none of these rights.

State law also protects any employees who are legitimately whistle blowers. If they blow the whistle on illegal activity they cannot be punished for it, even if they are wrong. Councilmember Marabella asked how this works when their supervisor writes their evaluation and has immediate impact on their pay for performance. Mr. Church replied that if their supervisor writes their evaluation and the employee claims it is in retaliation for being a whistle blower, they have a claim against the City. Supervisors need to be trained to avoid these claims. However, if an employee goes to a councilmember and tells him their supervisor wrote him down because they complained about him, it is not appropriate for that individual councilmember to review the evaluation. There is a procedure on this and the Councilmember's response should be to tell the employee to go through the grievance process. He added that the councilmembers will hear the grievances, so it is important that the employees work up to the appropriate level because if there is a grievance against a supervisor by their employees, eventually it will come to the Council and if a Councilmember has already been involved in it, they will not be able to give the director or the employee a fair hearing.

Mr. Church explained the role of a City Administrator. Brigham City's City Administrator is a deputy to the Mayor, appointed by the Mayor with the advice and consent of the Council. He is an arm of the Mayor, not an independent administrator. Some cities, Tremonton for example, have a City Manager with an ordinance laying out his powers and duties and the Mayor is a ceremonial Mayor only. Their City Manager is the CEO. The only way this can change is with the Mayor's consent and three votes or with five votes from the Council. Mr. Church said it has been his experience that eventually, with Brigham City's form of government, there will be a Mayor who cannot do the job. Either by personality or because of skill level, or just because the residents

voted in a nut. When that happens some future Council is going to have to face the issue of who is going to run the day-to-day affairs because the Mayor can't.

Mr. Church reviewed some of the common claims against cities. One is lawsuits that arise from disputes among the Mayor and Council about who is in charge. These are infrequent, but common. Every two years when there are municipal elections, somewhere in the state there is a fight among mayors and councils about powers. Syracuse and Bluffdale have both spent a lot of money and time on this fight. Before that it was LeVerkin and Lehi. Before that it was Payson. These can be avoided by having clear, written, structured policies that are developed when everyone is getting along - something to hand down to the next generation. These cities had problems because everything was done by local tradition and custom. The new Mayor comes in and says they are not going to do things a certain way and he is told he has to do it that way because that is how it has always been done. The new Mayor asks where it is written that it has to be done that way, and there is nothing in writing.

The second big source of disputes is the idea that councils and mayors can make wholesale changes in employees without retribution or lawsuits from the employees. Even at-will employees will fight the City if they do not think it is fair. It is important to have clear employee policies and guidelines on who is protected and who isn't, but not inconsistent with state law unless that it is the intent. For example, Perry's City Recorder was the City Recorder for a long time and got in a big fight with the new regime. The Mayor said City Recorders are not protected and she was an at-will employee and he had the support of the Council. He let her go and brought in a new City Recorder. Her response was that his actions were all political and it was unfair. She said she was more than the City Recorder and was also just like a regular employee and she cannot be fired. They had a big lawsuit, spent a lot of money and they have now settled. It didn't need to be that way if Perry had clearly outlined job descriptions prior to the fight, and had in writing that the position of City Recorder was appointed and at-will, or defined that the position was a dual appointment and was really a glorified secretary and was not a supervisor and not a political appointment.

The third source of fights and disputes is the idea that the Mayor alone can change significant policy. The Mayor in Lehi wanted to fire the City Manager, City Recorder and directors when he first took office. The Council said they were not going to fire them. This fight continued for a few years. This problem is a result of unclear policies on how hiring and firing decisions are made.

Mr. Church said none of these lawsuits have resulted in anything except attorneys making money. All of them were more emotional and personality based than factual and legal.

A few years ago when the new Mayor in Ivins started office he wanted to get rid of the City Recorder. She had worked there for many years and everyone loved her. Ivins used to be a small town of 1,500 and was then a big City with 15,000. The Recorder had been there a long time and was overwhelmed. The Mayor told her she was an appointed official and was gone. Her identity in the community was her job. There was no way she was going to walk away and feel good about it. In the end, the City settled with her for \$30,000 and gave her a retirement party. All she wanted was her dignity.

Employees' identities are in large part their job. Councilmembers come and go, but employees see themselves as part of the City. That is their identity, which is why cities get good service out of their directors and employees. When this is taken away from them, Councils need to remember that it will have serious consequences and will result in serious claims.

Councilmember Reese Jensen asked if clearly defined written policies help with continuity of government from one administration to another. Mr. Church said clearly defined written policies that are part of an Administrative Code help. However, most people in City business work on local tradition and custom. For example, has Brigham City adopted policies on how to conduct meetings? This has probably been handed down from one administration to another. Mr. Church said he represented a City when a new Mayor came in and said he was going to change the way their meetings were conducted. He would be the chairman and he was going to set the rules and procedures for the meetings and nothing can be put on the agenda unless they have the Mayor's permission; they don't speak unless they are called on; members of the public will be recognized before they speak and they will be recognized by the chair, not by the councilmembers. He wanted order because he was tired of the meetings going until 1:00 in the morning. He told the Council there would no longer be arguing, and if they wanted to speak to the other person they would speak to the chair and be polite. The Council went nuts, because that was not their custom. They were used to showing up for a meeting and having a free for

all until it was done. They passed some rules and everyone was happy, and these rules will be passed on to the next administration.

Mr. Church said he could not find anything in Brigham City's policies about the Council liaison responsibilities. Mayor Christensen said in the past the liaisons represented their departments during the budget process, but this process has changed over the last three years where the Council does not represent their department, they look at the overall budget. Mr. Church suggested however the City wants it should be in writing so the successors know what the intent is.

Ms. Sue Hill said the Council Representative on the Library Board is a voting member. Mr. Church said the Library Board is set up on a different section of the state law. They have their own protection.

Mr. Leonard said a previous Councilmember that was a representative on the Planning Commission stood up during a public hearing on a subdivision development and commented negatively against the development and demanded changes. He said if the changes weren't made before it came before the Council, he would vote against it. The developer complained and the City had to get risk management involved and hire an attorney to review it. The attorney sent the review back to the City's legal counsel who had to call in that Councilmember. He was very upset that the City even challenged him on his actions. He explained that the City stood the chance of a big risk because of his actions. Mr. Church said when developments are involved there are a lot of risks and lawsuits because of the nature of the business and the nature of private property rights. He said it is a small town tradition to have a member of the City Council either serve on or act as liaison to a Planning Commission. If the City is large enough and has enough volunteers to fill the Planning Commission, he recommended avoiding that. The reason is because the purpose of the Planning Commission is to make recommendations to the City Council. It doesn't make sense for a Councilmember to sit and make recommendations to themselves. It doesn't accomplish anything and waters down the process. Another role of the Planning Commission is functioning as the Land Use Authority in the permitting process. In that role, most often the appeal for that is the City Council. It is a violation of due process for a person to be involved in both ends of the decision - in the original decision and then hear their own appeal. It causes problems if a Councilmember participates in the initial decision on a subdivision and then participates again at Council. This is especially true for the Appeal Authority. A Councilmember cannot make the decision and sit as the appeal body. Ms. Brailsford asked who gets sued in this situation. Mr. Church said the City always gets sued because they have the money. Sometimes the Councilmember is sued individually, but they have immunities.

Mr. Buchanan asked what the role is of the City Council following a disaster declaration. Mr. Church said the Council's only responsibility during a disaster is to be the City Council. This is one of the differences in having legislative powers and administrative powers. Legislative power is the power to make policy. Administrative power is the power to carry out the policy and appoint those who can carry out the policy. In a disaster, it is all carrying out policy or deciding who makes the decision to carry out those policies. Policies will be decided by the Council, but the carrying out of those policies and making the quick decision in an emergency is the Mayor's responsibility. Mr. Buchanan said in a disaster there are only certain things that the Mayor and the Emergency Manager can do without going to the Council. He added that it's nice to know he has at least three on his side when he makes decisions. Mr. Church said if it is a true emergency there is no time to call a meeting and ask. If there's time to call a meeting and ask, it questions the nature of the emergency. Mr. Buchanan said in long-term emergencies there is time to call a meeting. Mr. Church said if there is time to call a meeting, the Council will act as the Council.

Councilmember Christensen said the Council is currently struggling with the decision of whether to have volunteer crossing guards or hire them through the City. The Police Department has trained crossing guards and PTAs choose who they want for crossing guards, and in other cases the City pays a part-time person to do that. Mr. Church said this is clearly a public safety/police function, not a school function. It is the City's responsibility to provide crossing guards where they are required by law and in other places as necessary. It is the City's responsibility to see that they are appropriately trained. If the City can get that done without paying them, that's great, but eventually the City will run out of volunteers and will have to pay people to do it. The volunteer society is fast disappearing. Throughout the state he sees tension between the school parents, teachers and administrators who want more crossings and more guards and the City who is willing to meet the minimum required by law, but are concerned about increasing beyond the minimum because of the cost. That tension will never go away. There is no solution. The City just needs to reach that balance. He added that once a crossing is established with a crossing guard, there is nothing harder than removing that guard. It is a City public safety responsibility and is established that way under state law. Mr. Leonard agreed

that it is the City's responsibility to make sure the sitings are in place, but if it doesn't meet the state requirements for a crossing guard, he asked if it is still the City's responsibility. Mr. Church said the function is the City's and staff can put them where they think they are required or where the law requires them, not everywhere people ask. Once they are in place, the crossing guards are the City's responsibility and they need to be trained and the crossings need to be maintained. Mr. Morgan said the City has a City volunteer policy and they have to go through training.

Councilmember Christensen asked about the City's policy of transferring money from the utility funds to the general fund. Mr. Church stated that the City should always remember that cities are in the business of providing public service, and the primary source for that service should be tax revenues. Fees, whether they be water fees or power rates or development fees, should cover the cost of service and not be used generally to subsidize public safety or parks, etc. However, that is Brigham City's decision and judgement. Cities are not in the business of running a power company; they are in the business of running a City. Cities are building a community, not a share hold of wealth. Frankly, it is easier to push costs for public safety and roads onto rate payers than it is taxpayers. He always urges cities to avoid that temptation as much as possible. He suggested not taking the easy way just because it's the easy way. However, if it is an appropriate rate, he would not criticize it. He added that residents will never believe it's appropriate because power buyers are not the same as taxpayers. They are not the same group of people. It is up to the Utility Advisory Board and the Council to decide what the appropriate level is. There is a certain amount of that money from the Power Department that is appropriately used to pay for councilmembers' salaries, City attorney, pay for City Hall, the City's insurance, and general fund employees. He cautioned against taking the easy way out to hit the rate payers for fear of the taxpayers. His rule is if the City is consciously doing that, it is wrong. If it is being done subconsciously, maybe it's wrong.

Mr. Leonard asked what Mr. Church's experience has been with contracts for at-will employees. Mr. Church said he has never met a City Administrator that did not insist on having an employment contract when he was hired.

Councilmember Christensen said Box Elder has a 3-member County Commission and a lot are converting to Council form of government. Mr. Church said the historical form of local government was government by committee; the commission is an ultimate committee. The change to a Council form of government is a change to the federal or state system with either an elected or appointed chief executive officer and a legislative body. He did not feel one is any better than another, they are just different. Cache and Morgan Counties have a Council with an executive; Salt Lake County has a Council with an elected executive they call a Mayor. Summit and Wasatch Counties have a Council with an appointed executive. This turns the County councils into legislatures only and creates a chief executive officer. It provides more professional administration but it also creates a kingdom of three rather than a kingdom of one. This may or may not be better depending on who is hired. The plus side is that they are easier to get rid of if they are hired executives. The down side is that it is more expensive. The Salt Lake County Commission consists of seven members and every one of them has two administrative assistants. The Mayor's Office has a full staff as large as the governor's. It is the second largest government in the State of Utah behind the state government. Compare this to Salt Lake City's staff which consists of two staff members for the entire Council. Councilmember Christensen explained that three people with all that authority for a large County is a concern for a lot of people. Mr. Church said the reason this works well in rural counties is because they do not provide municipal services. Salt Lake County has municipal services. They are the biggest City in the state even though they are not incorporated. Their Sheriff's Department is not a common Sheriff's Department, it is a Police Department. They have a Road Department and a Planning Department. They have everything Salt Lake City has. Summit County is moving toward that. He felt that a 3-member Commission works well for a traditional rural County.

The meeting adjourned at 11:03 a.m.